IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 42 OF 2005.

Ignatius Braganza,
son of late Francisco Ambrose Braganza,
major of age, r/o House No.147/A,
Agar Vaddo, Calangute,
Bardez, Goa. .... Appellant.

Versus

1. Shri Thomas Braganza,
R/o House No. 147/A,
Agar Vaddo, Calangute,
Bardez, Goa. ..... Respondent.

Respondents No.2 to 9 deleted as per Order dated 2.03.2006.

Shri S.G. Bhobe, Advocate for the Appellant.

Shri S.M. Singbal, Advocate for the Respondent No. 1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 2nd MARCH, 2006.

ORAL JUDGMENT:

Heard. Leave to delete respondents No.2 to 9. Amendment to be carried out forthwith. Admit. By consent heard forthwith.

2. The appellant challenges the Order dated 15th April, 2005 passed by the IInd Ad-hoc Addl. District Judge, Panaji in Civil Misc. Appln No. 254/2004 in Civil Suit No. 310/2004, being totally arbitrary and contrary to the provisions of the basic law applicable to matters of temporary

injunction. By the impugned order, the trial Court has allowed the application for temporary injunction filed by the respondent and the appellant has been restrained from running his factory in the suit premises. The appellant is also directed to close down the factory within two months from the date of the Order. The factory referred to is in relation to manufacture of cane furniture.

3. Bare reading of the impugned order discloses that the trial Court apart from reproducing some of the sentences from the plaint and application for temporary injunction and from some reported Judgments of different High Courts, has not at all applied its mind to the facts of the case and the rival contentions which were sought to be raised before the trial Court. It is settled principle of law that in cases relating to applications for temporary injunction, Court has to consider whether the applicant has been able to make out a prima facie case, followed by the issue relating to balance of convenience and then to consider the issue of irreparable loss to either of the parties in case of grant and/or refusal of the injunction. Without ascertaining these three aspects of the matter, the Court is not expected to dispose of the application for temporary injunction. The Court has also to bear in mind the provisions of Order 39, Rule 1 of C.P.C. in such cases when the matter relates to immovable property.

4. Analysis of the materials on record does not mean mere reproduction of few sentences from here and there from the pleadings of the parties. The Court has to consider the case put forth by both the parties and then analyse the materials on record to ascertain to what extent the case of each of the parties finds support from such materials. Based on such analysis, the Court has to ascertain whether prima facie case has been made out by the appellant for the grant of relief prayed for. Having ascertained so, the Court has thereafter to consider the balance of convenience and further the point of irreparable loss. All these points are to be considered on proper application of mind to the materials on record and the law applicable thereto. The impugned order nowhere discloses any such exercise having been done by the trial Court while disposing of the application for temporary injunction. Being so, the impugned order cannot be sustained.

5. The learned Advocate for the respondent has also fairly conceded that the order does not comply with the law laid down by the Apex Court and this Court in relation to the disposal of applications for temporary injunction.

6. In the result, therefore, the impugned order is quashed and set aside and the matter is remanded to the Trial Court to decide the

application for temporary injunction afresh after considering the prima facie case, balance of convenience and the point of irreparable loss, based on proper analysis of the materials on record. Appeal is accordingly disposed of with the above directions with no order as to costs.

R.M.S. KHANDEPARKAR, J.

sl.